

## HOUSE BILL NO. 370

INTRODUCED BY GALLIK

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MONTANA STRIP AND UNDERGROUND MINE RECLAMATION ACT; REVISING PROCEDURES FOR CONTESTED CASE HEARINGS; ELIMINATING CERTAIN PERMIT APPLICATION FEE REQUIREMENTS; REVISING THE BOND RELEASE PROCEDURES; CLARIFYING THE PROHIBITION ON MINING CERTAIN LANDS; CLARIFYING THE HEARING REQUIREMENTS ON THE DEPARTMENT'S PERMIT DECISIONS; PROVIDING CRITERIA FOR AN ADMINISTRATIVELY COMPLETE BOND RELEASE APPLICATION; REQUIRING PUBLIC NOTICE FOR A BOND RELEASE; REVISING THE OBJECTION PROCESS FOR A BOND RELEASE; CLARIFYING PROCEDURES FOR MODIFICATIONS OF BOND RELEASE APPLICATIONS; CLARIFYING THE VEGETATION RECLAMATION REQUIREMENTS; ALLOWING A PERMITTEE TO REQUEST A CONTESTED CASE HEARING ON A PERMIT SUSPENSION OR REVOCATION; AMENDING SECTIONS 82-4-206, 82-4-223, 82-4-225, 82-4-226, 82-4-227, 82-4-231, 82-4-232, 82-4-233, 82-4-235, AND 82-4-251, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 82-4-206, MCA, is amended to read:

**"82-4-206. Procedure for contested case hearings.** (1) ~~A person aggrieved by a final decision of the department under this part~~ An applicant, permittee, or person with an interest that is or may be adversely affected may request a hearing before the board on any of the following decisions of the department by submitting a written request stating the reason for the request within 30 days after the department's decision:

(a) approval or denial of an application for a permit pursuant to 82-4-231;

(b) approval or denial of an application for a prospecting permit pursuant to 82-4-226;

(c) approval or denial of an application to increase or reduce a permit area pursuant to 82-4-225;

(d) approval or denial of an application to renew or revise a permit pursuant to 82-4-221; or

(e) approval or denial of an application to transfer a permit pursuant to 82-4-238 or 82-4-250.

(2) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under subsection (1)."

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2       **Section 2.** Section 82-4-223, MCA, is amended to read:

3       **"82-4-223. Permit fee and surety Surety bond.** ~~(1) An application fee of \$100 shall be paid before the~~  
4 ~~permit required in this part shall be issued.~~

5       ~~(2)(1)~~ Before a permit may be issued, the operator shall file with the department a bond payable to the  
6 state of Montana with surety satisfactory to the department in ~~the penal sum~~ an amount to be determined by the  
7 department of not less than \$200 for each acre or fraction ~~thereof~~ of an acre of the area of land affected, with  
8 a minimum bond of \$10,000, conditioned upon the faithful performance of the requirements set forth in this part  
9 and of the rules of the board. The operator may elect to deposit cash, negotiable bonds, or negotiable certificates  
10 of deposit of any bank organized or transacting business in the United States. The cash deposit or market value  
11 of ~~such these~~ securities ~~shall~~ must be equal to or greater than the amount of the bond required for the bonded  
12 area. The level of bonding ~~shall~~ must be relative to the degree of disturbance projected by the original permit  
13 and the annual report. A political subdivision or agency of the state need not file a bond unless required to do  
14 so by the department. The department shall adjust the amount of bond required if the cost of reclamation  
15 changes.

16       ~~(3)(2)~~ In determining the amount of the bond, the department shall take into consideration the character  
17 and nature of the overburden, the future suitable use of the land involved, and the cost of backfilling, grading,  
18 highwall reduction, subsidence stabilization, water control, topsoiling, and reclamation to be required, but ~~in no~~  
19 ~~event shall~~ the bond may not be less than the total estimated cost to the state of completing the work described  
20 in the reclamation plan."  
21

22       **Section 3.** Section 82-4-225, MCA, is amended to read:

23       **"82-4-225. Application for increase or reduction in permit area.** The department may increase or  
24 reduce the area of land affected by an operation under a permit on application by an operator, but an increase  
25 may not extend the period for which an original permit was issued. An operator may, at any time, apply to the  
26 department for an amendment of the permit so as to increase or reduce the acreage affected by it. The operator  
27 shall file an application and map in the same form and with the same content as required for an original  
28 application under this part and ~~shall pay an application fee of \$50 and~~ shall file with the department a  
29 supplemental bond in the amount to be determined under 82-4-223 for each acre or fraction of an acre of the  
30 increase approved. All procedures of this part pertaining to original applications apply to applications for the

1 increase of the area of land affected, except for incidental boundary revisions. If the department approves a  
2 reduction in the acreage covered by the original or supplemental permit, it shall release the bond for each acre  
3 reduced, but ~~in no case shall~~ the bond may not be reduced below \$10,000, except as provided in 82-4-223."

4  
5 **Section 4.** Section 82-4-226, MCA, is amended to read:

6 **"82-4-226. Prospecting permit.** (1) Except as provided in subsection (8), prospecting by any person  
7 on land not included in a valid strip-mining or underground-mining permit is unlawful without possessing a valid  
8 prospecting permit issued by the department as provided in this section. A prospecting permit may not be issued  
9 until the person submits an application, the application is examined, amended if necessary, and approved by  
10 the department, and an adequate reclamation performance bond is posted, all of which prerequisites must be  
11 done in conformity with the requirements of this part.

12 (2) An application for a prospecting permit must be made in writing, notarized, and submitted to the  
13 department in duplicate upon forms prepared and furnished by it. The application must include among other  
14 things a prospecting map and a prospecting reclamation plan of substantially the same character as required  
15 for a surface-mining or underground-mining map and reclamation plan under this part. The department shall  
16 determine by rules the precise nature of the required prospecting map and reclamation plan. Any applicant who  
17 intends to prospect by means of core drilling shall specify the location and number of holes to be drilled, methods  
18 to be used in sealing aquifers, and other information that may be required by the department. The applicant shall  
19 state what types of prospecting and excavating techniques will be employed on the affected land. The  
20 application must also include any other or further information that the department may require.

21 ~~(3) The application must be accompanied by a fee of \$100. This fee must be used as a credit toward~~  
22 ~~the strip-mining or underground-mining permit fee provided by this part if the area covered by the prospecting~~  
23 ~~permit becomes covered by a valid surface-mining or underground-mining permit obtained before or at the time~~  
24 ~~the prospecting permit expires.~~

25 ~~(4)(3)~~ Before the department gives final approval to the prospecting permit application, the applicant  
26 shall file with the department a reclamation and revegetation bond in a form and in an amount as determined  
27 in the same manner for strip-mining or underground-mining reclamation and revegetation bonds under this part.

28 ~~(5)(4)~~ In the event that the holder of a prospecting permit desires to strip mine or underground mine the  
29 area covered by the prospecting permit and has fulfilled all the requirements for a strip-mining or  
30 underground-mining permit, the department may permit the postponement of the reclamation of the acreage

1 prospected if that acreage is incorporated into the complete reclamation plan submitted with the application for  
2 a strip-mining or underground-mining permit. Any land actually affected by prospecting or excavating under a  
3 prospecting permit and not covered by the strip-mining or underground-mining reclamation plan must be  
4 promptly reclaimed.

5 ~~(6)~~(5) The prospecting permit is valid for 1 year and is subject to renewal, suspension, and revocation  
6 in the same manner as strip-mining or underground-mining permits under this part.

7 ~~(7)~~(6) The holder of the prospecting permit shall file with the department the same progress reports,  
8 maps, and revegetation progress reports as are required of strip-mining or underground-mining operators under  
9 this part.

10 ~~(8)~~(7) Prospecting that is not conducted in an area designated unsuitable for coal mining pursuant to  
11 82-4-227 or 82-4-228, that is not conducted for the purpose of determining the location, quality, or quantity of  
12 a mineral deposit, and that does not remove more than 250 tons of coal is not subject to subsections (1) through  
13 ~~(7)~~ (6). In addition, prospecting that is conducted to determine the location, quality, or quantity of a mineral  
14 deposit outside an area designated unsuitable, that does not remove more than 250 tons of coal, and that does  
15 not substantially disturb the natural land surface is not subject to subsections (1) through ~~(7)~~ (6). However, a  
16 person who conducts prospecting described in this subsection shall file with the department a notice of intent  
17 to prospect that contains the information required by the department before commencing prospecting operations.  
18 If this prospecting substantially disturbs the natural land surface, it must be conducted in accordance with the  
19 performance standards of the board's rules regulating the conduct and reclamation of prospecting operations  
20 that remove coal. The department may inspect these prospecting and reclamation operations at any reasonable  
21 time."

22  
23 **Section 5.** Section 82-4-227, MCA, is amended to read:

24 **"82-4-227. Refusal of permit.** (1) An application for a prospecting, strip-mining, or underground-mining  
25 permit or major revision may not be approved by the department unless, on the basis of the information set forth  
26 in the application, in an onsite inspection, and in an evaluation of the operation by the department, the applicant  
27 has affirmatively demonstrated that the requirements of this part and rules will be observed and that the  
28 proposed method of operation, backfilling, grading, subsidence stabilization, water control, highwall reduction,  
29 topsoiling, revegetation, or reclamation of the affected area can be carried out consistently with the purpose of  
30 this part. The applicant for a permit or major revision has the burden of establishing that the application is in

1 compliance with this part and the rules adopted under it.

2 (2) The department may not approve the application for a prospecting, strip-mining, or  
3 underground-mining permit when the area of land described in the application includes land that has special,  
4 exceptional, critical, or unique characteristics or when mining or prospecting on that area would adversely affect  
5 the use, enjoyment, or fundamental character of neighboring land that has special, exceptional, critical, or unique  
6 characteristics. For the purposes of this part, land is defined as having these characteristics if it possesses  
7 special, exceptional, critical, or unique:

8 (a) biological productivity, the loss of which would jeopardize certain species of wildlife or domestic  
9 stock;

10 (b) ecological fragility, in the sense that the land, once adversely affected, could not return to its former  
11 ecological role in the reasonably foreseeable future;

12 (c) ecological importance, in the sense that the particular land has such a strong influence on the total  
13 ecosystem of which it is a part that even temporary effects felt by it could precipitate a systemwide reaction of  
14 unpredictable scope or dimensions; or

15 (d) scenic, historic, archaeologic, topographic, geologic, ethnologic, scientific, cultural, or recreational  
16 significance. In applying the provisions of this subsection (d), particular attention should be paid to the  
17 inadequate preservation previously accorded Plains Indian history and culture.

18 (3) The department may not approve an application for a strip- or underground-coal-mining permit or  
19 major revision unless the application affirmatively demonstrates that:

20 (a) the assessment of the probable cumulative impact of all anticipated mining in the area on the  
21 hydrologic balance has been made by the department and the proposed operation of the mining operation has  
22 been designed to prevent material damage to the hydrologic balance outside the permit area; and

23 (b) the proposed strip- or underground-coal-mining operation would not:

24 (i) interrupt, discontinue, or preclude farming on alluvial valley floors that are irrigated or naturally  
25 subirrigated, excluding undeveloped rangelands that are not significant to farming on alluvial valley floors and  
26 excluding land about which the department finds that if any farming will be interrupted, discontinued, or  
27 precluded, it is of such small acreage as to be of negligible impact on the farm's agricultural production; or

28 (ii) materially damage the quantity or quality of water in surface water or underground water systems  
29 that supply the valley floors described in subsection (3)(b)(i).

30 (4) Subsection (3)(b) does not affect those strip- or underground-coal-mining operations that in the year

preceding the enactment of Public Law 95-87 produced coal in commercial quantities and were located within or adjacent to alluvial valley floors or had obtained specific permit approval by the department to conduct strip- or underground-coal-mining operations within alluvial valley floors. If coal deposits are precluded from being mined under this subsection, the director of the department shall certify to the secretary of interior that the mineral owner or lessee may be eligible for participation in coal exchange programs pursuant to section 510(5) of Public Law 95-87.

(5) (a) If the area proposed to be mined contains prime farmland, the department may not grant a permit to mine coal on the prime farmland unless it finds in writing that the applicant:

(i) has the technological capability to restore the mined area, within a reasonable time, to levels of yield equivalent to or higher than nonmined prime farmland in the surrounding area under equivalent levels of management; and

(ii) can meet the soil reconstruction standards of 82-4-232(3).

(b) Nothing in this subsection (5) applies to a permit issued prior to August 3, 1977, or to any revisions or renewals of the permit or to any existing strip- or underground-mining operations for which a permit was issued prior to August 3, 1977.

(6) If the department finds that the overburden on any part of the area of land described in the application for a prospecting, strip-mining, or underground-mining permit is such that experience in the state with a similar type of operation upon land with similar overburden shows that substantial deposition of sediment in streambeds, subsidence, landslides, or water pollution cannot feasibly be prevented, the department shall delete that part of the land described in the application upon which the overburden exists. The burden is on the applicant to demonstrate that any area should not be deleted under this subsection.

(7) If the department finds that the operation will constitute a hazard to a dwelling, public building, school, church, cemetery, commercial or institutional building, public road, stream, lake, or other public property, the department shall delete those areas from the prospecting, strip-mining, or underground-mining permit application before it can be approved. Strip- or underground-coal-mining may not be allowed:

(a) within 300 feet of an occupied dwelling, unless waived by the owner;

(b) within 300 feet of any public building, school, church, community, or institutional building, or public park;

(c) within 100 feet of a cemetery;

(d) within 100 feet of the outside right-of-way line of any public road, except where mine access roads

1 or haulage roads join the right-of-way line. The department may permit the roads to be relocated or the area  
2 affected to lie within 100 feet of the road if, after public notice and opportunity for public hearing in the locality,  
3 a written finding is made that the interests of the public and the landowners affected will be protected.

4 (8) Strip- or underground-mining may not be conducted within 500 feet of active or abandoned  
5 underground mines in order to prevent breakthroughs and to protect health or safety of miners. However, the  
6 department shall permit an operator to mine near, through, or partially through an abandoned underground mine  
7 or closer to an active underground mine if:

8 (a) the nature, timing, and sequencing of specific strip-mine activities and specific underground-mine  
9 activities are jointly approved by the department and the regulatory authority concerned with the health and  
10 safety of underground miners; and

11 (b) the operations will result in improved resource recovery, abatement of water pollution, or elimination  
12 of hazards to the health and safety of the public.

13 (9) The department may not approve an application for a strip- or underground-coal-mining operation  
14 if the area proposed to be mined is included:

15 (a) within an area designated unsuitable for strip or underground coal mining; or

16 (b) within an area under review for this designation under an administrative proceeding, unless in an  
17 area as to which an administrative proceeding has commenced pursuant to this part, the operator making the  
18 permit application demonstrates that prior to January 1, 1977, the operator made substantial legal and financial  
19 commitments in relation to the operation for which the operator is applying for a permit.

20 (10) A permit or major permit revision for a strip- or underground-coal-mining operation may not be  
21 issued unless the applicant has affirmatively demonstrated by its coal conservation plan that failure to conserve  
22 coal will not occur. The department may require the applicant to submit any information it considers necessary  
23 for review of the coal conservation plan.

24 (11) Whenever information available to the department indicates that a strip- or underground-coal-mining  
25 operation that is owned or controlled by the applicant or by any person who owns or controls the applicant is  
26 currently in violation of Public Law 95-87, as amended, any state law required by Public Law 95-87, as amended,  
27 or any law, rule, or regulation of the United States or of any department or agency in the United States pertaining  
28 to air or water environmental protection, the department may not issue a strip- or underground-coal-mining  
29 permit or amendment, other than an incidental boundary revision, until the applicant submits proof that the  
30 violation has been corrected or is in the process of being corrected to the satisfaction of the administering

1 agency.

2 (12) The department may not issue a strip- or underground-coal-mining permit or amendment, other than  
3 an incidental boundary revision, to any applicant that it finds, after an opportunity for hearing, owns or controls  
4 any strip- or underground-coal-mining operation that has demonstrated a pattern of willful violations of Public  
5 Law 95-87, as amended, or any state law required by Public Law 95-87, as amended, when the nature and  
6 duration of the violations and resulting irreparable damage to the environment indicate an intent not to comply  
7 with the provisions of this part.

8 (13) Subject to valid existing rights, no strip- or underground-coal-mining operations except those that  
9 existed as of August 3, 1977, may be conducted:

10 (a) on lands within the boundaries of units of the national park system, the national wildlife refuge  
11 ~~systems~~ system, the national wilderness preservation system, the national system of trails, the wild and scenic  
12 rivers system, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act or study  
13 rivers or study river corridors established in any guidelines issued under that act, or national recreation areas  
14 designated by an act of congress; or

15 (b) on any federal lands within national forests, subject to the exceptions and limitations of 30 CFR  
16 761.11(b) and the procedures of 30 CFR 761.13."

17  
18 **Section 6.** Section 82-4-231, MCA, is amended to read:

19 **"82-4-231. Submission of and action on reclamation plan.** (1) As rapidly, completely, and effectively  
20 as the most modern technology and the most advanced state of the art will allow, each operator granted a permit  
21 under this part shall reclaim and revegetate the land affected by the operation, except that underground tunnels,  
22 shafts, or other subsurface excavations need not be revegetated. Under the provisions of this part and rules  
23 adopted by the board, an operator shall prepare and carry out a method of operation, a plan of grading,  
24 backfilling, highwall reduction, subsidence stabilization, water control, and topsoiling and a reclamation plan for  
25 the area of land affected by the operation. In developing a method of operation and plans of grading, backfilling,  
26 highwall reduction, subsidence stabilization, water control, topsoiling, and reclamation, all measures must be  
27 taken to eliminate damages to landowners and members of the public, their real and personal property, public  
28 roads, streams, and all other public property from soil erosion, subsidence, landslides, water pollution, and  
29 hazards dangerous to life and property.

30 (2) The reclamation plan must set forth in detail the manner in which the applicant intends to comply



1 with 82-4-232 through 82-4-234 and this section and the steps to be taken to comply with applicable air and  
2 water quality laws and rules and any applicable health and safety standards.

3 (3) The application for a permit or major revision of a permit, which must contain the reclamation plan,  
4 must be submitted to the department.

5 (4) The department shall determine whether the application is administratively complete. An application  
6 is administratively complete if it contains information addressing each application requirement in 82-4-222 and  
7 the rules implementing that section and all information necessary to initiate processing and public review. The  
8 department shall notify the applicant in writing of its determination no later than 90 days after submittal of the  
9 application. If the department determines that the application is not administratively complete, it shall specify in  
10 the notice those items that the application must address. The application is presumed administratively complete  
11 as to those requirements not specified in the notice.

12 (5) If the department determines that an environmental impact statement on the application is required,  
13 it shall notify the applicant in writing at the same time it gives the applicant notice pursuant to subsection (4).

14 (6) After the applicant receives notice that the application is administratively complete, the applicant  
15 shall publish notice of filing of the application once a week for 4 consecutive weeks in a newspaper of general  
16 circulation in the locality of the proposed operation. The department shall notify various local governmental  
17 bodies, planning agencies, sewage and water treatment authorities, and water companies in the locality in which  
18 the proposed mining will take place of the application and provide a reasonable time for them to submit written  
19 comments. Any person having an interest that is or may be adversely affected or the officer or head of any  
20 federal, state, or local governmental agency or authority may file written objections to the proposed initial or  
21 revised application for permit or major revision within 30 days of the applicant's published notice. If written  
22 objections are filed and an objector requests an informal conference, the department shall hold an informal  
23 conference in the locality of the proposed operation within 30 days of receipt of the request. The department  
24 shall notify the applicant and all parties to the informal conference of its decision and the reasons for its decision  
25 within 60 days of the informal conference. The department may arrange with the applicant upon request by any  
26 party to the administrative proceeding for access to the proposed mining area for the purpose of gathering  
27 information relevant to the proceeding.

28 (7) The filing of written objections or a request for an informal conference may not preclude the  
29 department from proceeding with its review of the application as specified in subsection (8).

30 (8) (a) The department shall review each administratively complete application and determine the

1 acceptability of the application. During the review, the department may propose modifications to the application  
2 or delete areas from the application in accordance with the requirements of 82-4-227. A complete application  
3 is considered acceptable when the application is in compliance with all of the applicable requirements of this part  
4 and the regulatory program pursuant to this part.

5 (b) If the applicant significantly modifies the application after the application has been determined  
6 administratively complete in accordance with subsection (4), the department shall under this section either deny  
7 the application or conduct a new review, including an administrative completeness determination, public notice,  
8 and objection period.

9 (c) If an environmental impact statement is determined to be necessary prior to making a permit  
10 decision, the department shall complete and publish the final environmental impact statement at least 15 days  
11 prior to the date of issuance of the written findings pursuant to subsection (8)(f).

12 (d) Except as provided in 75-1-208(4)(b), within 120 days after it determines that an application is  
13 administratively complete, the department shall notify the applicant in writing whether the application is or is not  
14 acceptable. If the application is not acceptable, the department shall set forth the reasons why it is not  
15 acceptable, and it may propose modifications, delete areas, or reject the entire application. All items not  
16 specified as unacceptable in the department's notification are presumed to be acceptable. Except as provided  
17 in 75-1-208(4)(b), if the applicant revises the application in response to a notice of unacceptability, the  
18 department shall review the revised application and notify the applicant in writing within 120 days of the date of  
19 receipt whether the revised application is acceptable. If the revision constitutes a significant modification under  
20 subsection (8)(b), the department shall conduct a new review, beginning with an administrative completeness  
21 determination.

22 (e) When the application is determined to be acceptable, the department shall publish notice of its  
23 determination once a week for 2 consecutive weeks in a newspaper of general circulation in the locality of the  
24 proposed operation. Any person having an interest that is or may be adversely affected may file a written  
25 objection to the determination within 10 days of the department's last published notice. If a written objection is  
26 filed and an objector requests an informal conference, the department shall hold an informal conference in the  
27 locality of the proposed operation within 20 days of receipt of the request. The department shall notify the  
28 applicant and all parties to the informal conference of its decision and the reasons for the decision within 10 days  
29 of the informal conference.

30 (f) Except as provided in 75-1-208(4)(b), the department shall prepare written findings granting or

1 denying the permit or major revision application in whole or in part not later than 45 days from the date the  
2 application is determined acceptable. However, if lands subject to the federal lands program are included in the  
3 application for permit or major revision, the department shall prepare and submit written findings to the federal  
4 regulatory authority. If the department's decision is to grant the permit, the department shall issue the permit on  
5 the date of its written finding or, if any federal concurrence is necessary, on the date when the concurrence is  
6 obtained. If the application is denied, specific reasons for the denial must be set forth in the written notification  
7 to the applicant.

8 (g) If the department fails to act within the times specified in this subsection (8), it shall immediately  
9 notify the board in writing of its failure to comply and the reasons for the failure to comply.

10 (9) The applicant, a landowner, or any person with an interest that is or may be adversely affected by  
11 the department's permit decision may within 30 days of that decision submit a written notice requesting a  
12 hearing. The notice must contain the grounds upon which the requester contends that the decision is in error.  
13 The hearing must be ~~held~~ started within 30 days of the request. For purposes of a hearing, the ~~department board~~  
14 or its hearings officer may order site inspections of the area pertinent to the application. The ~~department board~~  
15 shall within 20 days of the hearing notify the person who requested the hearing, by certified mail, and all other  
16 persons, by regular mail, of the findings and decisions. A person who presided at the informal conference may  
17 not preside at the hearing or participate in the decision.

18 (10) In addition to the method of operation, grading, backfilling, highwall reduction, subsidence  
19 stabilization, water control, topsoiling, and reclamation requirements of this part and rules adopted under this  
20 part, the operator, consistent with the directives of subsection (1), shall:

21 (a) bury under adequate fill all toxic materials, shale, mineral, or any other material determined by the  
22 department to be acid-producing, toxic, undesirable, or creating a hazard;

23 (b) as directed by rules, seal off tunnels, shafts, or other openings or any breakthrough of water creating  
24 a hazard;

25 (c) impound, drain, or treat all runoff or underground mine waters so as to reduce soil erosion, damage  
26 to grazing and agricultural lands, and pollution of surface and subsurface waters;

27 (d) remove or bury all metal, lumber, and other refuse resulting from the operation;

28 (e) use explosives in connection with the operation only in accordance with department regulations  
29 designed to minimize noise, damage to adjacent lands, and water pollution and ensure public safety and for  
30 other purposes;

1 (f) adopt measures to prevent land subsidence unless the department approves a plan for inducing  
2 subsidence into an abandoned operation in a predictable and controlled manner, with measures for grading,  
3 topsoiling, and revegetating the subsided land surface. In order for a controlled subsidence plan to be approved,  
4 the applicant is required to show that subsidence will not cause a direct or indirect hazard to any public or private  
5 buildings, roads, facilities, or use areas, constitute a hazard to human life or health or to domestic livestock or  
6 a viable agricultural operation, or violate any other restrictions the department may consider necessary.

7 (g) stockpile and protect from erosion all mining and processing wastes until these wastes can be  
8 disposed of according to the provisions of this part;

9 (h) deposit as much stockpiled waste material as possible back into the mine voids upon abandonment  
10 in a manner that will prevent or minimize land subsidence. The remaining waste material must be disposed of  
11 as provided by this part and the rules of the board.

12 (i) seal all portals, entryways, drifts, shafts, or other openings between the surface and underground  
13 mine workings when no longer needed;

14 (j) to the extent possible using the best technology currently available, minimize disturbances and  
15 adverse impacts of the operation on fish, wildlife, and related environmental values and achieve enhancement  
16 of those resources when practicable;

17 (k) minimize the disturbances to the prevailing hydrologic balance at the mine site and in adjacent areas  
18 and to the quality and quantity of water in surface water and ground water systems both during and after strip-  
19 or underground-coal-mining operations and during reclamation as necessary to support postmining land uses  
20 and to prevent material damage to the hydrologic balance in the adjacent area by:

21 (i) avoiding acid or other toxic mine drainage by measures including but not limited to:

22 (A) preventing or removing water from contact with toxic-producing deposits;

23 (B) treating drainage to reduce toxic content that adversely affects downstream water upon being  
24 released to watercourses;

25 (C) casing, sealing, or otherwise managing boreholes, shafts, and wells and keeping acid or other toxic  
26 drainage from entering ground and surface waters;

27 (ii) (A) conducting strip- or underground-mining operations so as to prevent, to the extent possible using  
28 the best technology currently available, additional contributions of suspended solids to streamflow or runoff  
29 outside the permit area, but the contributions may not be in excess of requirements set by applicable state or  
30 federal law;

1 (B) constructing any siltation structures pursuant to subsection (10)(k)(ii)(A) prior to commencement  
2 of strip- or underground-mining operations, with the structures to be certified by a qualified registered engineer  
3 and to be constructed as designed and as approved in the reclamation plan;

4 (iii) cleaning out and removing temporary or large settling ponds or other siltation structures from  
5 drainways after disturbed areas are revegetated and stabilized and depositing the silt and debris at a site and  
6 in a manner approved by the department;

7 (iv) restoring recharge capacity of the mined area to approximate premining conditions;

8 (v) avoiding channel deepening or enlargement in operations that requires the discharge of water from  
9 mines;

10 (vi) preserving throughout the mining and reclamation process the essential hydrologic functions of  
11 alluvial valley floors in the arid and semiarid areas of the country;

12 (vii) designing and constructing reclaimed channels of intermittent streams and perennial streams to  
13 ensure long-term stability; and

14 (viii) any other actions that the department may prescribe to protect the hydrologic balance as necessary  
15 to support postmining land uses within the area affected and to prevent material damage to the hydrologic  
16 balance in adjacent areas;

17 (l) conduct strip- or underground-mine operations in accordance with the approved coal conservation  
18 plan;

19 (m) stabilize and protect all surface areas, including spoil piles, to effectively control air pollution;

20 (n) seal all auger holes with an impervious and noncombustible material in order to prevent drainage  
21 except when the department determines that the resulting impoundment of water in the auger holes may create  
22 a hazard to the environment or the public health and safety;

23 (o) develop contingency plans to prevent sustained combustion;

24 (p) refrain from construction of roads or other access ways up a streambed or drainage channel or in  
25 proximity to the channel so as to seriously alter the normal flow of water;

26 (q) meet other criteria that are necessary to achieve reclamation in accordance with the purposes of  
27 this part, taking into consideration the physical, climatological, and other characteristics of the site;

28 (r) with regard to underground mines, eliminate fire hazards and otherwise eliminate conditions that  
29 constitute a hazard to health and safety of the public;

30 (s) locate openings for all new drift mines working acid-producing or iron-producing coal seams in a

1 manner that prevents a gravity discharge of water from the mine.

2 (11) An operator may not throw, dump, pile, or permit the throwing, dumping, or piling or otherwise  
3 placing of any overburden, stones, rocks, mineral, earth, soil, dirt, debris, trees, wood, logs, or any other  
4 materials or substances of any kind or nature beyond or outside of the area of land that is under permit and for  
5 which a bond has been posted under 82-4-223 or place the materials described in this section in a way that  
6 normal erosion or slides brought about by natural physical causes will permit the materials to go beyond or  
7 outside of that area of land. An operator shall conduct the strip- or underground-mining operation in a manner  
8 that protects areas outside the permit area. (Certain 2003 amendments void on occurrence of contingency--sec.  
9 15, Ch. 204, L. 2003.)"

10  
11 **Section 7.** Section 82-4-232, MCA, is amended to read:

12 **"82-4-232. Area mining required -- bond -- alternative plan.** (1) (a) Area strip mining, a method of  
13 operation that does not produce a bench or fill bench, is required where strip mining is proposed. The area of  
14 land affected must be backfilled and graded to the approximate original contour of the land. However:

15 (i) consistent with the adjacent unmined landscape elements, the operator may propose and the  
16 department may approve regraded topography gentler than premining topography in order to enhance the  
17 postmining land use and develop a postmining landscape that will provide greater moisture retention, greater  
18 stability, and reduced soil losses from runoff and erosion;

19 (ii) postmining slopes may not exceed the angle of repose or lesser slope as is necessary to achieve  
20 a long-term static safety factor of 1.3 or greater and to prevent slides;

21 (iii) permanent impoundments may be approved if they are suitable for the postmining land use and  
22 otherwise meet the requirements of this part, as provided by board rules; and

23 (iv) reclaimed topography must be suitable for the approved postmining land use.

24 (b) Spoil from the first cut is not required to be transported to the last cut if highwalls are eliminated, box  
25 cut spoils are graded to blend in with the surrounding terrain, and the approximate original contour of the land  
26 is achieved.

27 (c) When directed by the department, the operator shall construct in the final grading diversion ditches,  
28 depressions, or terraces that will accumulate or control the water runoff.

29 (2) In addition to the backfilling and grading requirements, the operator's method of operation on steep  
30 slopes may be regulated and controlled according to rules adopted by the board. These rules may require any

1 measure to accomplish the purpose of this part.

2 (3) For coal mining on prime farmlands, the board shall establish by rule specifications for soil removal,  
3 storage, replacement, and reconstruction, and the operator must as a minimum be required to:

4 (a) segregate the A horizon of the natural soil, except where it can be shown that other available soil  
5 materials will create a final soil having a greater productive capacity; and if not used immediately, stockpile this  
6 material separately from other spoil and provide needed protection from wind and water erosion or  
7 contamination by other acid or toxic material;

8 (b) segregate the B horizon of the natural soil, or underlying C horizon or other strata, or a combination  
9 of such horizons or other strata that are shown to be both texturally and chemically suitable for plant growth and  
10 that can be shown to be equally or more favorable for plant growth than the B horizon in sufficient quantities to  
11 create in the regraded final soil a root zone of comparable depth and quality to that which existed in the natural  
12 soil; and if not used immediately, stockpile this material separately from other spoil and provide needed  
13 protection from wind and water erosion or contamination by acid or toxic material;

14 (c) replace and regrade the root zone material described in subsection (3)(b) with proper compaction  
15 and uniform depth over the regraded spoil material; and

16 (d) redistribute and grade in a uniform manner the surface soil horizon described in subsection (3)(a).

17 (4) All available topsoil must be removed in a separate layer, guarded from erosion and pollution, and  
18 kept in such a condition that it can sustain vegetation of at least the quality and variety it sustained prior to  
19 removal, provided that the operator shall accord substantially the same treatment to any subsurface deposit of  
20 material that is capable, as determined by the department, of supporting surface vegetation virtually as well as  
21 the present topsoil. After the operation has been backfilled and graded, the topsoil or the best available  
22 subsurface deposit of material that is best able to support vegetation must be returned as the top layer.

23 (5) As determined by rules of the board, time limits must be established requiring backfilling, grading,  
24 subsidence stabilization, water control, highwall reduction, topsoiling, planting, and revegetation to be kept  
25 current. All backfilling, subsidence stabilization, sealing, grading, and topsoiling must be completed before  
26 necessary equipment is moved from the operation.

27 (6) (a) The permittee may file ~~a request~~ an application with the department for the release of all or part  
28 of a performance bond or deposit. ~~Within 30 days after any application for bond or deposit release has been filed~~  
29 ~~with the department, the permittee shall submit a copy of an advertisement notice placed at least once a week~~  
30 ~~for 4 successive weeks in a newspaper of general circulation in the locality of the prospecting or mining~~

operation. ~~The notice is considered part of any bond release~~ The application and must contain a notification proposed public notice of the precise location of the land affected, the number of acres for which bond release is sought, the permit and the date approved, the amount of the bond filed and the portion sought to be released, the type and appropriate dates of reclamation work performed, and a description of the results achieved as they relate to the permittee's approved reclamation plan. In addition, as part of any bond release application, the permittee shall submit copies of letters that the permittee has sent to adjoining property owners, local governmental bodies, planning agencies, and sewage and water treatment authorities or water companies in the locality of the operation, notifying them of the permittee's intention to seek release from the bond.

(b) The department shall determine whether the application is administratively complete. An application is administratively complete if it includes:

- (i) the location and acreage of the land for which bond release is sought;
- (ii) the amount of bond release sought;
- (iii) a description of the completed reclamation, including the date of performance;
- (iv) a discussion of how the results of the completed reclamation satisfy the requirements of the approved reclamation plan; and
- (v) information required by rules implementing this part.

(c) The department shall notify the applicant in writing of its determination no later than 60 days after submittal of the application. If the department determines that the application is not administratively complete, it shall specify in the notice those items that the application must address. After an application for bond release has been determined to be administratively complete by the department, the permittee shall publish a public notice that has been approved as to form and content by the department at least once a week for 4 successive weeks in a newspaper of general circulation in the locality of the mining operation.

(d) Any person with a valid legal interest that might be adversely affected by the release of a bond or the responsible officer or head of any federal, state, or local governmental agency that has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the operation or is authorized to develop and enforce environmental standards with respect to the operation may file written objections to the proposed release of bond to the department within 30 days after the last publication of the notice. If written objections are filed and a hearing is requested, the department shall hold a public hearing in the locality of the operation proposed for bond release or in Helena, at the option of the objector, within 30 days of the request for hearing. The department shall inform the interested parties of the time and place of the



1 hearing. The date, time, and location of the public hearing must be advertised by the department in a newspaper  
2 of general circulation in the locality for 2 consecutive weeks. Within 30 days after the hearing, the department  
3 shall notify the permittee and the objector of its final decision.

4 (e) Without prejudice to the rights of the objector or the permittee or the responsibilities of the  
5 department pursuant to this section, the department may establish an informal conference to resolve written  
6 objections.

7 (f) For the purpose of the hearing under subsection (6)(d), the department may administer oaths,  
8 subpoena witnesses or written or printed materials, compel the attendance of witnesses or the production of  
9 materials, and take evidence, including but not limited to conducting inspections of the land affected and other  
10 operations carried on by the permittee in the general vicinity. A verbatim record of each public hearing required  
11 by this section must be made, and a transcript must be made available on the motion of any party or by order  
12 of the department.

13 (g) If the applicant significantly modifies the application after the application has been determined to  
14 be administratively complete, the department shall conduct a new review, including an administrative  
15 completeness determination. A significant modification includes, but is not limited to:

16 (i) the notification of an additional property owner, local governmental body, planning agency, or sewage  
17 and water treatment authority of the permittee's intention to seek a bond release;

18 (ii) a material ~~change~~ INCREASE in the acreage for which a bond release is sought or in the amount of  
19 bond release sought; or

20 (iii) a material change in the reclamation for which a bond release is sought or the information used to  
21 evaluate the results of that reclamation.

22 (b)(h) Upon receipt of the request and copies of the notification made under subsection (6)(a), the ~~The~~  
23 department shall, within 30 days of determining that the application is administratively complete or as soon as  
24 weather permits, conduct an inspection and evaluation of the reclamation work involved. In the evaluation, the  
25 department shall consider, among other things, the degree of difficulty in completing any remaining reclamation,  
26 whether pollution of surface and subsurface water is occurring, the probability of continuance or future  
27 occurrence of the pollution, and the estimated cost of abating the pollution. ~~The department shall notify the~~  
28 permittee in writing of its decision to release or not to release all or part of the performance bond within 60 days  
29 of the filing of the request if a public hearing is not held pursuant to subsection (6)(f) or, if a public hearing is held  
30 pursuant to that subsection, within 30 days after the hearing.

1 (i) The department shall review each administratively complete application to determine the acceptability  
2 of the application. A complete application is acceptable if the application is in compliance with all of the  
3 applicable requirements of this part, the rules adopted under this part, and the permit.

4 (j) (i) The department shall notify the applicant in writing regarding the acceptability of the application  
5 no later than 60 days from the date of the inspection.

6 (ii) If the department determines that the application is not acceptable, it shall specify in the notice those  
7 items that the application must address.

8 (iii) If the applicant revises the application in response to a notice of unacceptability, the department shall  
9 review the revised application and notify the applicant in writing within 60 days of the date of receipt as to  
10 whether the revised application is acceptable.

11 (iv) If the revision constitutes a significant modification, the department shall conduct a new review,  
12 beginning with an administrative completeness determination.

13 (v) A significant modification includes, but is not limited to:

14 (A) the notification of an additional property owner, local governmental body, planning agency, or  
15 sewage and water treatment authority of the permittee's intention to seek a bond release;

16 (B) a material change INCREASE in the acreage for which a bond release is sought or the amount of bond  
17 release sought; or

18 (C) a material change in the reclamation for which a bond release is sought or the information used to  
19 evaluate the results of that reclamation.

20 ~~(e)(k)~~ The department may release the bond or deposit in whole or in part if it is satisfied the reclamation  
21 covered by the bond or deposit or portion of the bond or deposit has been accomplished as required by this part  
22 according to the following schedule:

23 (i) When the permittee completes the plugging, backfilling, regrading, and drainage control of a bonded  
24 area in accordance with the approved reclamation plan, the department shall release 60% of the bond or  
25 collateral for the applicable permit area.

26 (ii) After revegetation has been established on the regraded lands in accordance with the approved  
27 reclamation plan, the department shall, for the period specified for operator responsibility of reestablishing  
28 revegetation, retain that amount of bond for the revegetated area that would be sufficient for a third party to  
29 cover the cost of reestablishing revegetation. Whenever a silt dam is to be retained as a permanent  
30 impoundment, the portion of bond may be released under this subsection ~~(6)(e)(iii)~~ (6)(k)(ii) if provisions for

1 sound future maintenance by the operator or the landowner have been made with the department. Any part of  
2 the bond ~~or deposit~~ may not be released under this subsection ~~(6)(c)(ii)~~ (6)(k)(ii):

3 (A) as long as the lands to which the release would be applicable are contributing suspended solids to  
4 streamflow or runoff outside the permit area in excess of the requirements of 82-4-231(10)(k); or

5 (B) before soil productivity for prime farm lands to which the release would be applicable has returned  
6 to equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent  
7 management practices, as determined from the soil survey.

8 (iii) When the permittee has successfully completed all prospecting, mining, and reclamation activities,  
9 the department shall release the remaining portion of the bond, but not before the expiration of the period  
10 specified for responsibility and not until all reclamation requirements of this part are fully met.

11 ~~(d)(l)~~ If the department disapproves the application for release of the bond or a portion of the bond, it  
12 shall notify the permittee, in writing, stating the reasons for disapproval and recommending corrective actions  
13 necessary to secure the release and allowing opportunity for a public hearing.

14 ~~(e)(m)~~ When an application for total or partial bond release is filed with the department, it shall notify  
15 the municipality or county in which a prospecting or mining operation is located by certified mail at least 30 days  
16 prior to the release of all or a portion of the bond.

17 ~~(f) Any person with a valid legal interest that might be adversely affected by release of the bond or the~~  
18 ~~responsible officer or head of any federal, state, or local governmental agency that has jurisdiction by law or~~  
19 ~~special expertise with respect to any environmental, social, or economic impact involved in the operation or is~~  
20 ~~authorized to develop and enforce environmental standards with respect to the operations has the right to file~~  
21 ~~written objections to the proposed release from bond to the department within 30 days after the last publication~~  
22 ~~of the notice provided for in subsection (6)(a). If written objections are filed and a hearing is requested, the~~  
23 ~~department shall inform all the interested parties of the time and place of the hearing and, within 30 days of the~~  
24 ~~request for the hearing, hold a public hearing in the locality of the operation proposed for bond release. The date,~~  
25 ~~time, and location of the public hearing must be advertised by the department in a newspaper of general~~  
26 ~~circulation in the locality for 2 consecutive weeks, and the hearing must be held in the locality of the operation~~  
27 ~~proposed for bond release or at the state capital, at the option of the objector, within 30 days of the request for~~  
28 ~~the hearing.~~

29 ~~—— (g) Without prejudice to the rights of the objectors or the permittee or the responsibilities of the~~  
30 ~~department pursuant to this section, the department may establish an informal conference to resolve written~~

1 objections.

2 ~~—— (h) For the purpose of the hearing under subsection (6)(f), the department may administer oaths;~~  
3 ~~subpoena witnesses or written or printed materials; compel the attendance of witnesses or the production of~~  
4 ~~materials; and take evidence, including but not limited to site inspections of the land affected and other~~  
5 ~~operations carried on by the permittee in the general vicinity. A verbatim record of each public hearing required~~  
6 ~~by this section must be made, and a transcript must be made available on the motion of any party or by order~~  
7 ~~of the department.~~

8 (7) All disturbed areas must be reclaimed in a timely manner to conditions that are capable of supporting  
9 the land uses that they were capable of supporting prior to any mining or to higher or better uses as approved  
10 pursuant to subsection (8).

11 (8) (a) An operator may propose a higher or better use as an alternative postmining land use. If the  
12 landowner is not the operator, the operator shall submit written documentation of the concurrence of the  
13 landowner or the land management agency with jurisdiction over the land. The department may approve the  
14 proposed alternative postmining land use only if it meets all of the following criteria:

15 (i) There is a reasonable likelihood for achievement of the ~~alternate~~ alternative land use.

16 (ii) The ~~alternate~~ alternative land use does not present any actual or probable hazard to the public health  
17 or safety or any threat of water diminution or pollution.

18 (iii) The ~~alternate~~ alternative land use will not:

19 (A) be impractical or unreasonable;

20 (B) be inconsistent with applicable land use policies or plans;

21 (C) involve unreasonable delay in implementation; or

22 (D) cause or contribute to violation of federal, state, or local law.

23 (b) As used in this section, the term "landowner" includes a person who has sold the surface estate to  
24 the operator with an option to repurchase the surface estate after mining and reclamation are complete.

25 (9) The reclamation plan must incorporate appropriate wildlife habitat enhancement features that are  
26 integrated with cropland, grazing land, pastureland, land occasionally cut for hay, or other uses in order to  
27 enhance habitat diversity, with emphasis on big game animals, game birds, and threatened and endangered  
28 species that have been documented to live in the area of land affected, and to enhance wetlands and riparian  
29 areas along rivers and streams and bordering ponds and lakes. Incorporation of wildlife habitat enhancement  
30 features does not constitute a change in land use to fish and wildlife habitat and may not interfere with the

1 designated land use.

2 (10) Facilities existing prior to mining, including but not limited to public roads, utility lines, railroads, or  
3 pipelines, may be replaced as part of the reclamation plan. (Certain 2003 amendments void on occurrence of  
4 contingency--sec. 15, Ch. 204, L. 2003.)"

5  
6 **Section 8.** Section 82-4-233, MCA, is amended to read:

7 **"82-4-233. Planting of vegetation following grading of disturbed area.** (1) The operator shall  
8 establish on regraded areas and on all other disturbed areas, except water areas, surface areas of roads, and  
9 other constructed features approved as part of the postmining land use, a vegetative cover that is in accordance  
10 with the approved permit and reclamation plan and that is:

11 (a) diverse, effective, and permanent;

12 (b) composed of species native to the area or of introduced species when desirable and necessary to  
13 achieve the postmining land use and when approved by the department;

14 (c) at least equal in extent of cover to the natural vegetation of the area; and

15 (d) capable of stabilizing the soil surface in order to control erosion to the extent appropriate for the  
16 approved postmining land use.

17 (2) The reestablished plant species must:

18 (a) be compatible with the approved postmining land use;

19 (b) have the same seasonal growth characteristics as the original vegetation;

20 (c) be capable of self-regeneration and plant succession;

21 (d) be compatible with the plant and animal species of the area; and

22 (e) meet the requirements of applicable seed, poisonous and noxious plant, and introduced species  
23 laws or regulations.

24 (3) Reestablished vegetation must be appropriate to the postmining land use so that when the  
25 postmining land use is:

26 (a) cropland, the requirements of subsections (1)(a), (1)(c), (2)(b), and (2)(c) are not applicable;

27 (b) pastureland or grazing land, reestablished vegetation must have use for grazing by domestic  
28 livestock at least comparable to premining conditions or enhanced when practicable;

29 (c) fish and wildlife habitat, forestry, or recreation, trees and shrubs must be planted to achieve  
30 appropriate stocking rates.

(4) All underground shafts, tunnels, or other excavations are excluded from the provisions of subsection (1).

~~(5) For land that was mined, disturbed, or redisturbed after May 2, 1978, and that was seeded prior to January 1, 1984, using a seed mix that was approved by the department and on which the reclaimed vegetation otherwise meets the requirements of subsections (1) and (2) and applicable state and federal seed and vegetation laws and rules, introduced species are considered desirable and necessary to achieve the postmining land use and may compose a major or dominant component of the reclaimed vegetation. (Certain 2003 amendments void on occurrence of contingency--sec. 15, Ch. 204, L. 2003.)"~~

**Section 9.** Section 82-4-235, MCA, is amended to read:

**"82-4-235. Determination of successful revegetation -- final bond release.** (1) Success of revegetation must be judged on the effectiveness of the vegetation for the approved postmining land use, the extent of cover compared to the cover occurring in the natural vegetation, and the requirements of 82-4-233. Standards for success are:

(a) for areas reclaimed for use as cropland, crop production must be at least equal to that achieved prior to mining based on comparison with historical data, comparable reference areas, or United States department of agriculture publications applicable to the area of the operation, as referenced in rules adopted by the board;

(b) for areas reclaimed for use as pastureland or grazing land, the ground cover and production of living plants on the revegetated area must be at least equal to that of a reference area or other standard approved by the department as appropriate for the postmining land use;

(c) for areas reclaimed for use as fish and wildlife habitat, forestry, or recreation, success of revegetation must be determined on the basis of approved tree density standards or shrub density standards, or both, and vegetative ground cover required to achieve the postmining land use;

(d) reestablished vegetation is diverse if multiple plant species meeting the requirements of 82-4-233(1)(b) are present. The department may approve a lesser diversity standard for postmining land uses other than grazing land.

(e) reestablished vegetation is considered effective if the postmining land use is achieved and erosion is controlled;

(f) reestablished vegetation is considered permanent if it is diverse and effective at the end of the 10-year responsibility period specified under subsection (2); and

(g) plant species composing the reestablished vegetation are considered to have the same seasonal characteristics of growth as the original vegetation, to be capable of regeneration and plant succession, and to be compatible with the plant and animal species of the area if those plant species are native to the area, are introduced species that have become naturalized, or are introduced species approved by the department as desirable and necessary to achieve the postmining land use.

(2) Inspection and evaluation of reclaimed vegetative cover must be made as soon as possible following an application for final bond release to determine if a satisfactory stand has been established. If the department determines that a satisfactory vegetative cover has been established, it shall release the remaining bond held on the area reclaimed after public notice and an opportunity for hearing as provided in 82-4-232(6). The remaining bond may not be released prior to a period of 10 years after the last year of augmented seeding, fertilizing, irrigation, or other work required under this part for those operations or portions of operations that were seeded after May 2, 1978, or prior to a period of 5 years after initial planting for all exploration activities and all other operations.

(3) (a) Notwithstanding the provision in subsection (2), on land from which coal was removed prior to May 3, 1978, and on land from which coal was not removed and that was not used, disturbed, or redisturbed in connection with this part after May 2, 1978, pursuant to a permit issued by the department under this part, the department may approve for release a bond on an area of reclaimed vegetation that meets the following criteria:

(i) it was seeded using a seed mixture that was approved by the department under the criteria established pursuant to 82-4-233 and that included introduced species; and

(ii) at least one of the following conditions exists:

(A) the standards of 82-4-233(1) are otherwise achieved;

(B) the operator has demonstrated substantial usefulness of the reclaimed vegetation for grazing of livestock;

(C) the operator demonstrates that the reclaimed vegetation has substantial value as a habitat component for wildlife present in the area; or

(D) the topography and soils are suitable for conversion to cropland or hayland consistent with the standards of 82-4-232 and the department approves and the operator completes that conversion.

(b) On lands that meet the criteria described in subsection (3)(a), interseeding or supplemental planting may be performed without reinitiating the liability period provided in subsection (2). (Certain 2003 amendments void on occurrence of contingency--sec. 15, Ch. 204, L. 2003.)"

1  
2       **Section 10.** Section 82-4-251, MCA, is amended to read:

3       **"82-4-251. Noncompliance -- suspension of permits.** (1) If it is determined on the basis of an  
4 inspection that the permittee is or that any condition or practice exists in violation of any requirement of this part  
5 or any permit condition required by this part that creates an imminent danger to the health or safety of the public  
6 or is causing or can reasonably be expected to cause significant and imminent environmental harm to land, air,  
7 or water resources, the director of the department or an authorized representative shall immediately order  
8 cessation of the operation or the portion of the operation relevant to the condition, practice, or violation. The  
9 cessation order remains in effect until the director or an authorized representative determines that the condition,  
10 practice, or violation has been abated or until modified, vacated, or terminated by the director or an authorized  
11 representative pursuant to subsection (5). If the director or an authorized representative finds that the ordered  
12 cessation of the operation or any portion of the operation will not completely abate the imminent danger to the  
13 health or safety of the public or the significant and imminent environmental harm to land, air, or water resources,  
14 the director or the authorized representative shall, in addition to the cessation order, impose affirmative  
15 obligations requiring any steps that the director or the authorized representative considers necessary to abate  
16 the imminent danger or the significant environmental harm.

17       (2) When, on the basis of an inspection, the department determines that any permittee is in violation  
18 of any requirement of this part or any permit condition required by this part that does not create an imminent  
19 danger to the health or safety of the public or cannot be reasonably expected to cause significant and imminent  
20 environmental harm to land, air, or water resources, the director or an authorized representative shall issue a  
21 notice to the permittee or the permittee's agent fixing a reasonable time, not exceeding 90 days, for the  
22 abatement of the violation and providing opportunity for public hearing. If, upon expiration of the period of time  
23 as originally fixed or subsequently extended, for good cause shown and upon the written finding of the director  
24 or an authorized representative, the director or an authorized representative finds that the violation has not been  
25 abated, the director or an authorized representative shall immediately order a cessation of the operation or the  
26 portion of the operation relevant to the violation. The cessation order remains in effect until the director or an  
27 authorized representative determines that the violation has been abated or until modified, vacated, or terminated  
28 by the director or an authorized representative pursuant to subsection (5). In the order of cessation issued under  
29 this subsection, the director shall determine the steps necessary to abate the violation in the most expeditious  
30 manner possible and shall include the necessary measures in the order.



(3) When, on the basis of an inspection, the director or an authorized representative determines that a pattern of violations of any requirements of this part or any permit conditions required by this part exists or has existed and if the director or an authorized representative also finds that the violations are caused by the unwarranted failure of the permittee to comply with any requirements of this part or any permit conditions or that the violations are willfully caused by the permittee, the director or an authorized representative shall issue an order to the permittee to show cause as to why the permit should not be suspended or revoked and shall provide opportunity for a public hearing. If a hearing is requested, the director shall inform all interested parties of the time and place of the hearing. Upon the permittee's failure to show cause as to why the permit should not be suspended or revoked, the director or an authorized representative shall suspend or revoke the permit. A permittee may request a contested case hearing on a permit suspension or revocation by filing a request for hearing, specifying the grounds for the request, within 30 days of receipt of the order of suspension or revocation. The order is effective upon expiration of the period for requesting a hearing or, if a hearing is requested, upon issuance of a final order by the board. The hearing must be conducted in accordance with the requirements of Title 2, chapter 4, part 6. When a permit has been revoked, the department may order the performance bond forfeited.

(4) Any additional permits held by an operator whose mining permit has been revoked must be suspended, and the operator is not eligible to receive another permit or to have the suspended permits reinstated until the operator has complied with all the requirements of this part with respect to former permits issued to the operator. An operator who has forfeited a bond is not eligible to receive another permit unless the land for which the bond was forfeited has been reclaimed without cost to the state or the operator has paid into the reclamation account a sum together with the value of the bond the department finds adequate to reclaim the lands.

(5) Notices and orders issued pursuant to this section must set forth with reasonable specificity the nature of the violation and the remedial action required, the period of time established for abatement, and a reasonable description of the portion of the operation to which the notice or order applies. Each notice or order issued under this section must be given promptly to the permittee or the permittee's agent by the department, by the director, or by the authorized representative who issued the notice or order. All notices and orders must be in writing and be signed by the authorized representatives. Any notice or order issued pursuant to this section may be modified, vacated, or terminated by the director or an authorized representative. However, any notice or order issued pursuant to this section that requires cessation of mining by the operator expires within 30 days

1 of actual notice to the operator unless ~~a~~ an informal public hearing, if requested by the person to whom the  
2 notice or order was issued, is held at the site or within such reasonable proximity to the site that any viewings  
3 of the site can be conducted during the course of ~~public the~~ hearing. If the department receives a request for an  
4 informal public hearing 21 days after service of the notice or order, the period for holding the informal public  
5 hearing is extended by the number of days after the 21st day that the request was received.

6 (6) A person who has been issued a notice or an order of cessation pursuant to ~~this section subsection~~  
7 (1) or (2) or a person who has an interest that is or may be adversely affected by an order issued pursuant to  
8 subsection (1) or (2) or by modification, vacation, or termination of ~~an that~~ order may ~~apply to the department~~  
9 ~~for review of~~ request a hearing before the board on that order within 30 days of its issuance or within 30 days  
10 of its modification, vacation, or termination. ~~Upon receipt of the application, the department shall make an~~  
11 ~~investigation. The investigation must provide an opportunity for public hearing at the request of the applicant or~~  
12 ~~the person who has an interest who is or may be adversely affected to enable the applicant or the person to~~  
13 ~~present information relating to the issuance and continuance of the notice or order or the modification, vacation,~~  
14 ~~or termination of it.~~ The filing of an application for review under this subsection may not operate as a stay of any  
15 order or notice. The ~~department~~ board shall make findings of fact and issue a written decision incorporating an  
16 order vacating, affirming, modifying, or terminating the order.

17 (7) Whenever an order is issued under this section or as the result of any administrative proceeding  
18 under this part, at the request of any person, a sum equal to the aggregate amount of all costs, expenses, and  
19 attorney fees as determined by the department to have been reasonably incurred by the person for or in  
20 connection with the person's participation in the proceedings, including any judicial review of agency actions,  
21 may be assessed against either party as the court, resulting from judicial review, or the department, resulting  
22 from administrative proceedings, considers proper.

23 (8) In order to protect the stability of the land, the director or an authorized representative shall order  
24 cessation of underground coal mining under urbanized areas, cities, towns, and communities and adjacent to  
25 industrial or commercial buildings, major impoundments, or permanent streams if the director or the authorized  
26 agent finds imminent danger to inhabitants of the urbanized areas, cities, towns, and communities."  
27

28 NEW SECTION. Section 11. Saving clause. [This act] does not affect rights and duties that matured,  
29 penalties that were incurred, or proceedings that were begun before [the effective date of this act].  
30

